

State-by-State Guide to NRD Programs in All 50 States

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States may pursue NRD claims pursuant to the key federal statutes or, in some cases, pursuant to independent state authority. Over the years, many states have played a critical role in the prosecution of NRD claims. Furthermore, as can be seen below, it is fair to say that state programs are evolving rapidly. Several state programs are fairly robust and many other states are currently considering increased NRD activity.

This paper provides an overview of the respective state programs, a discussion of major matters and settlements where that information is available, contact information and important reference material.

The information below was generally derived from self-reporting by the state trustees. Arnold & Porter contacted every state trustee and solicited information regarding the trustee's NRD program. Specifically, we requested information regarding the following: (i) the nature and history of the trustee's efforts, (ii) the number of employees involved and their roles, (iii) the state's NRD budget, (iv) the damage assessment methodologies used, (v) authority to employ private counsel, (vi) the types of injuries frequently seen, (vii) the amounts recovered in past actions, (viii) the major pending matters, (ix) whether the state was currently pursuing or considering pursuing groundwater claims, and (x) the applicable state statutes, if any.

In general, the state trustees were very responsive and willing to provide information. Many state trustees responded in writing, although in some cases information was gathered by telephone. To the extent the trustee responded in writing, these responses are on file with the author. We received informative responses from trustees in all but five states. Additional information was obtained from the internet. This paper will be updated regularly to correct errors and to add new developments as appropriate.

[1] Alabama

[a] Overview

The Natural Resource Trustees in Alabama are the Commissioner of Conservation and Natural Resources and the State Geologist, with the Commissioner of Conservation and Natural Resources serving as the lead trustee. The Trustees do not have a dedicated NRD staff, but use staff members from within their departments as necessary. The state does not use private attorneys to bring NRD claims. Alabama's Trustees prefer to use habitat based assessment

methods, although other methods are employed as necessary. The state is considering implementing a groundwater program.

[b] Contact Information

Alabama Dept. of Conservation and Natural Resources: Will Brantley, Natural Resource Manager, 64 North Union Street, Montgomery, Alabama 36130. Tel: (334)242-3484. Web: <http://www.outdooralabama.com/public-lands/stateLands/LandsPrograms/NRDA.CFM>.

Geological Survey of Alabama: Bob Mink, Deputy Director, 420 Hackberry Lane, P.O. Box 869999, Tuscaloosa, Alabama 35486. Tel: (205)349-2852. Web: <http://www.gsa.state.al.us/>.

[2] Alaska

[a] Overview

Alaska has four Natural Resource Trustees: the Department of Environmental Conservation, the Department of Natural Resources, the Department of Fish and Game, and the Department of Law. NRD activities are focused primarily in Alaska's Prevention and Emergency Response Program, which deals with oil spills. The Prevention and Emergency Response Program was established in 1995 and employs thirty-five full-time employees. Since 1995, three cases have been settled under federal statutes with state participation. One case is currently pending. In general, Alaska participates in NRD recovery efforts initiated by federal trustees. Alaska does not use private attorneys to pursue NRD claims. Alaska's state NRD statutes can be found at AS §§ 46.03.780, 46.03.820.

[b] Major Matters

Alaska has mostly pursued relatively small matters. The major exception is the Exxon Valdez oil spill, which resulted in total payments to state and federal authorities of over \$1 billion. Further information on the Exxon Valdez oil spill can be found at <http://www.evostc.state.ak.us/index.htm>.

[c] Contact Information

Alaska Department of Environmental Conservation: Leslie Pearson, Prevention & Emergency Response Program Manager, Tel: (907) 269-7543. E-mail: leslie_pearson@dec.state.ak.us. Web: <http://www.dec.state.ak.us/>.

Alaska Department of Law: Environmental Section 1031 W. 4th Ave., Suite 200, Anchorage, AK 99501. Tel: (907) 269-5274. Web: <http://www.law.state.ak.us/>.

[3] Arizona

[a] Overview

Arizona's Natural Resources Trustee is the Director of the Arizona Department of Environmental Quality. The state had no budgeted NRD funding, but allocates resources on an as-needed basis. To date, Arizona has not litigated or settled any NRD claims, but it is currently pursuing one claim involving a copper mine. Arizona does not have authority to use private attorneys to pursue NRD claims. Arizona does not have a state NRD statute.

[b] Contact Information

Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007.
Tel: (602) 771-2300 or (800) 234-5677. <http://www.azdeq.gov/index.html>

[4] Arkansas

Arkansas has state statutory authority for NRD claims codified at A.C.A. § 8-4-103(b); A.C.A. § 8-5-702(e); § 8-6-204(b),(c); § 8-7-204(b),(c); § 8-7-806(d),(e). Arkansas statutes provide for a Natural Resources Damages Advisory Board, which is tasked with developing projects for the restoration, rehabilitation, replacement, and acquisition of natural resources; requesting proposals for natural resource-related projects; reviewing and evaluating proposals for natural resource-related projects; and selecting projects for the restoration, rehabilitation, replacement, and acquisition of natural resources. The statute governing the Board's powers and duties is A.C.A. § 8-12-104.

[5] California

[a] Overview

California's Natural Resource Trustees for purposes of CERCLA and OPA are the Director of the Department of Fish and Game, the California Water Resources Control Board, the State Lands Commission, and the Department of Toxic Substances Control. Additional trustees are authorized to act under state law, including the Department of Parks and Recreation and the University of California. A dedicated NRD office exists within the Department of Fish and Game, the Office of Spill Prevention and Response ("OSPR"). OSPR was created in 1991 and employs two toxicologists, two economists, and two restoration biologists. These staff members are assisted by attorneys and scientists from other state offices. OSPR typically carries a case load of five major cases and ten minor cases. To date, the state has litigated or settled sixteen large and fifty smaller NRD cases. Total damages recovered are nearly \$115 million exclusive of fines, penalties, and assessment costs; this total represents total NRD recovered by all trustees, including federal trustees.

California usually assesses NRD using habitat or resource equivalency analysis for resources and benefits transfer information for recreational losses. California has on occasion retained private counsel to bring NRD claims. The Department of Toxic Substances Control is currently evaluating the New Jersey groundwater initiative.

California has numerous state-law authorities for pursuing NRD claims, including Government Code Section § 8670.56.5 (h), Fish and Game Code §§ 2014, 12011 and 12016, Harbors and Navigation § 151, and Health and Safety Code § 25189.1. The Government Code contains provisions relating to natural resource damages resulting from oil spills. Under the Government Code, responsible parties are strictly liable, jointly and severally, for natural resource damages “which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.” Cal. Gov’t. Code §8670.56.5(a). Furthermore, parties liable for civil penalties for the unlawful disposal of hazardous waste face additional liability for restoration, rehabilitation, and replacement of natural resources damaged “as a result of the disposal of the hazardous waste.” Cal. Health & Safety Code § 25189.1(a)(2).

[b] Major Matters

Montrose Chemical Corp. — According to the state, from the 1940s to the 1970s, the Montrose Chemical Plant discharged an estimated 1,800 tons of the pesticide DDT into Los Angeles County sewers, which eventually made its way to the Pacific Ocean. Montrose also allegedly dumped hundreds of tons of DDT-contaminated waste directly into the ocean near Santa Catalina Island. Other responsible parties disposed of large quantities of PCBs into the ocean via the local sewer system. These discharges resulted in harm to fish, breeding problems in raptors, including bald eagles, and other negative effects on the marine ecosystem. The state and federal trustees litigated their NRD claims in federal district court, leading to several important published opinions. Ultimately, the NRD case against the industrial PRPs settled for \$30 million. A draft restoration plan for the site was released in April 2005, and is in the process of being finalized.

Cantara Loop/Dunsmuir Chemical Spill — A train accident in 1991 caused a chemical tank car to spill 19,000 gallons of the herbicide metam sodium into the Sacramento River. Effects of the spill extended for over 20 miles to Lake Shasta. The primary resources affected were instream and riparian habitats and fish; recreational use was also affected. The state and federal trustees settled the NRD portion of the case with the responsible party, Southern Pacific Railroad, for \$14 million. Restoration activities are now in progress.

American Trader Oil Spill — In 1990, the tanker American Trader ran over its anchor, causing it to spill an estimated 416,598 gallons of crude oil near Huntington Beach in Orange County. In addition to affecting fish and recreational use of Huntington Beach, the spill killed an estimated 3,400 birds. The recreational injury component of the case was tried, and a jury awarded the trustees \$13.2 million. The biological injury component (i.e., effects on fish and birds), settled for \$2.8 million plus \$300,000 in water pollution monitoring projects.

[c] Contact Information

California Department of Fish and Game: Dr. Julie Yamamoto, Resource Assessment Program, Scientific Division, Office of Spill Prevention and Response, 1700 K Street, Sacramento, CA 95814. Tel: (916) 327-3196; Katherine Verrue-Slater, Staff Counsel, Office of Spill Prevention and Response, 1700 K Street, Sacramento, CA 95814. Tel: (916) 324-9813. Web: <http://www.dfg.ca.gov/Ospr/>.

California State Lands Commission: Executive Officer, 100 Howe Ave., Suite 100-South, Sacramento, CA 95825-8202. Tel: (916) 574-1900. Fax: (916) 574-1810. Web: <http://www.slc.ca.gov/>.

California Department of Toxic Substances Control: Steve Koyaskao, Assistant Chief Counsel, Headquarters, 1001 I Street, P.O. Box 806, Sacramento, 95812-0806. Tel: (916) 322-6996. E-mail: skoyasak@dtsc.ca.gov. Web: <http://www.dtsc.ca.gov/>.

[6] Colorado

[a] Overview

The state trustees in Colorado are the Attorney General, the Executive Director of the Department of Public Health and Environment (DPHE) and the Executive Director of the Department of Natural Resources (DNR). There is no dedicated NRD program office in Colorado. Rather, activities are conducted by various employees of the DPHE and DNR, as well as the AG's office, as needed. NRD activity commenced in Colorado in 1983, and the state has handled about 10 matters since then, including two large pending matters (discussed below). The total NRD recovery to date is approximately \$10 million. While the state has authority to retain private lawyers, it has not done so for NRD claims. Colorado is not currently planning a NRD groundwater initiative.

[b] Major matters

California Gulch Site — The California Gulch Superfund Site is comprised of 12 operable units located in the town of Leadville, the adjacent mining district in Lake County, and the watershed of California Gulch which flows to the Arkansas River, and has been undergoing a very large, cooperative remediation effort since 1990. According to the DPHE, the NRD resources that may require restoration include surface water and habitat loss. While there is an agreement among the PRPs and state related to the development of future restoration projects, the bankruptcy filing in 2005 of ASARCO creates some uncertainty moving forward. For more information, see the site website at <http://www.cdphe.state.co.us/hm/rpcalgulch.asp>.

Rocky Mountain Arsenal — Another large NRD matter in Colorado is the 17,000 acre Rocky Mountain Arsenal site near Denver. This site is a former weapons and chemicals manufacturing site that is being redeveloped into a National Wildlife Refuge pursuant to a 1992 act of Congress. The massive investigation and cleanup have been proceeding for over 2 decades. Most of the cleanup is being conducted pursuant to an agreement amongst several federal agencies and Shell Oil Company, but not the State. The state has reserved its rights to pursue NRD claims. According to the DPHE, the state trustees are currently negotiating with the responsible parties on a set of restoration projects that will expand parks and open space connected to the site. The NRD claim mostly involves the loss of groundwater resources. For more information, see the site website at <http://www.cdphe.state.co.us/hm/rma.asp#Site%20Remediation>

[c] Contact Information

Department of Public Health & Environment: Angus Campbell, 4300 Cherry Creek Drive South, Denver, CO 80246-1530. Tel: (303) 692-3385. Web: <http://www.cdphe.state.co.us/cdphehom.asp>.

Department of Law: Vicky Peters, 1525 Sherman St., 5th Floor, Denver, CO 80203. Tel: (303) 866-5068. Web: <http://www.ago.state.co.us/index.cfm>.

[7] Connecticut

[a] Overview

Connecticut has no formal NRD program. The Commissioner of the Department of Environmental Protection oversees the state's involvement with NRD issues, but has not officially been designated as Natural Resources Trustee by the governor. As Connecticut's program is informal, there is no dedicated staff or budget for NRD issues. Nonetheless, Connecticut has pursued at least two NRD cases to settlement, including a major matter involving General Electric. Connecticut defers to federal trustees in assessing NRD. Connecticut does not use private attorneys to pursue NRD claims.

[b] Major Matter

Housatonic and Connecticut Rivers — Connecticut's biggest NRD case to date involves General Electric's plant in Pittsfield, Massachusetts. The plant, which began operating in 1903, allegedly released PCBs into the Housatonic River, from which they made their way into the Connecticut River and ultimately Long Island Sound. The PCBs were trapped behind dams, causing high concentrations to accumulate in river sediments. The PCB contamination resulted in fish consumption advisories being imposed in 1977. The total settlement between the states and General Electric was valued at \$25 million, including \$6 million in restoration projects. Connecticut and Massachusetts split the \$19 million cash component.

[c] Contact Information

Connecticut Department of Environmental Protection: Ed Parker, Bureau Chief of Natural Resources, 79 Elm Street, Hartford, CT 06106. Tel: (860) 424-3010. Web: <http://dep.state.ct.us/>.

[8] Delaware

[a] Overview

The trustee for Delaware is the Secretary of the Department of Natural Resources and Environmental Control (DNREC). Much of the NRD work is conducted by officials within the Site Investigation & Restoration Branch ("SIRB") in the Division of Air and Waste Management, including two biologists, one environmental scientist and one project manager. There is, however, no official NRD program office; rather NRD activities are delegated to particular offices as appropriate. There is no budget allocation in either 2005 or 2006 for NRD. The state typically, although not exclusively, relies upon a habitat equivalence analysis to value natural resources. Delaware does not currently retain private lawyers to prosecute NRD Claims. The state authority for NRD is Title 7 (Conservation) Part 9 (Hazardous Subs.) Chapter 91 (Haz. Sub. Cleanup Act).

[b] Major Matters

The state is at various stages in at least 7 NRD matters involving wetlands, fish kills, groundwater, surface water, benthic organisms, fish, oyster, and crabs. These claims include a number of Superfund sites: Wildcat Landfill Superfund Site; Halby Chemical (habitat enhancement ongoing; settlement not complete); Motiva Enterprises Sulphuric Acid Spill (restoration includes easements for approximately 250 acres and wetlands enhancement); E. I. DuPont de Nemours Superfund Site in Newport (extensive cooperative restoration projects along river and wetlands; settlement nearly complete); and the Koppers Landfill Site (ROD recently issued; NRD commencing soon). In addition, the state is pursuing NRD claims at the Athos Oil Spill site and the Indian River Power Plant.

[c] Contact Information

An excellent internet site for locating information related to environmental enforcement is the Delaware Environmental Navigator: <http://www.dnrec.state.de.us/DNRECEis>.

Delaware Department of Natural Resources and Environmental Control: Jane Biggs Sanger, Project Manager, Division of Air and Waste Management, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, DE 19720. Tel: (302) 395-2600. Web: <http://www.dnrec.delaware.gov/default.htm>.

[9] Florida

[a] Overview

The Department of Environmental Protection is the NRD Trustee in Florida. NRD claims related to coastal oil spills are overseen by the Bureau of Emergency Response. Claims related to hazardous waste sites are handled by the Division of Waste Management. Florida first began pursuing NRD claims for oil spills in 1992.

The Bureau of Environmental Response has twenty-eight full-time employees, but none of them work exclusively on NRD, nor is any portion of the Bureau's budget earmarked for NRD cases. For oil spills, administrative orders are issued assessing damages based on a formula codified at chapter 376 of the Florida Statutes. The Bureau has settled more than 2,500 NRD claims related to oil spill since it began work in 1992, collecting more than \$1.6 million.

Within the Division of Waste Management, NRD activity is primarily handled by the Hazardous Waste Cleanup Section, which has ten employees, none of which work exclusively on NRD issues. Staff members from other sections may also work on NRD issues as appropriate. At the time of publication, Florida had no active CERCLA NRD proceedings; however, the Division of waste management estimates that approximately 22% of Florida's sixty-four Superfund sites potentially have NRD issues. NRD settlements have already been negotiated at about one third of those sites. The Division of Waste Management uses a variety of assessment methodologies as appropriate.

Florida does not use private attorneys and is not currently considering a groundwater initiative. Its state NRD statutes are codified at F.S.A. §§ 376.121, § 403.727. In Florida, liable parties have a right to contribution from other responsible parties. F.S.A. § 403.727(8). A party may be liable for natural resource damages resulting from prohibited pollution discharges, including those resulting from "the release or threatened of a hazardous substance." F.S.A. §§ 371.121; 403.727.

[b] Major Matters

Tampa Bay Oil Spill — In August 1993, two tankers collided in Tampa Bay, resulting in the release of 330,000 gallons of fuel oil. As a result of the collision, one of the tankers caught fire and spilled an additional 32,000 gallons of various petroleum products. According to the state, the oil eventually made its way to shore, soiling approximately 12.5 miles of beaches. Several shellfish beds also had to be closed to fishing because of hydrocarbon levels in the shellfish. State and federal trustees settled NRD claims with respect to the spill in 1999 for \$3.1 million. Restoration projects are currently ongoing.

Sapp Battery — This site was a battery salvage facility near Alford. Allegedly improper disposal practices lead to metals contamination in soil, surface water, and groundwater, which migrated to nearby wetlands. NRD claims with respect to the site resulted in a \$1.2 million settlement.

[c] Contact Information

For coastal oil spills: Phil Wieczynski, Chief, Bureau of Emergency Response, Division of Law Enforcement, Department of Environmental Protection, 3900 Commonwealth Blvd., MS 659, Tallahassee, FL 32399. Tel: (850) 245-2875. E-mail: Phil.Wieczynski@dep.state.fl.us. Web: <http://www.dep.state.fl.us/law/ber>.

For Superfund-related NRD: Kelsey Helton, Bureau of Waste Cleanup, Division of Waste Management, Mail Station 4520, Department of Environmental Protection, 2600 Blirstone Road, Tallahassee, FL 32399-2400. Tel: (850) 245-8927. E-mail: Kelsey.Helton@dep.state.fl.us. Web: <http://www.dep.state.fl.us/waste>.

[10] Georgia

[a] Overview

Georgia's Natural Resources Trustee is the Commissioner of the Department of Natural Resources. Georgia has no formal NRD program, but pursues NRD claims as they arise using appropriate staff. To date, Georgia has only settled one case, but it is actively evaluating other possible NRD claims. Georgia does not use private attorneys to pursue NRD claims, but has been approached by private attorneys in the past. Georgia has no specific state NRD statute, and mostly relies on federal law to pursue NRD claims.

[b] Major Matters

R.J. Schlumberger — The Sangamo–Weston plant site, a capacitor manufacturing plant in Pickens, South Carolina operated from 1955 to 1987. According to the state, during this time significant PCB contamination was released from the plant into Twelvemile Creek, Lake Hartwell, and surrounding areas. Schlumberger Technology Corp. is the corporate successor to Sangamo-Weston. In January 2006, Schlumberger settled NRD claims brought by Georgia and South Carolina, as well as the federal government, for \$11.8 million. Schlumberger agreed to spend an additional \$8-10 million to remove two hydroelectric dams from Twelvemile Creek and to conduct restoration projects.

[c] Contact Information

Georgia Department of Natural Resources: Bill Mundy, Manager, Corrective Action Program, Hazardous Waste Management Branch, Environmental Protection Division, 2 Martin Luther King Jr. Drive, Suite 1154, Atlanta, GA 30334. Tel: (404) 657-8612. Web: http://www.gaepd.org/Documents/index_haz.html.

[11] Hawaii

[a] Overview

The state does not have a dedicated office for NRD claims. Rather, each division of the Department of Land and Natural Resources (DLNR) handles its own cases, subject to approval by the Board of Land and Natural Resources (BLNR). *See* Haw. Rev. Stat. Ch. 171. Examples of two recent NRD cases handled by the Hawaii DLNR are the following: (1) the unauthorized harvesting of koa; and (2) damage to conservation lands and a coral reef. The state refers to the following authority for NRD: Article XI of the Hawaii State Constitution; Title 12 of the Hawaii Revised Statutes; Title 13 of the Hawaii Administrative Rules. The state does not have authority to retain private lawyers to bring cases on the state's behalf.

[b] Contact Information

Hawaii Department of Land and Natural Resources: Hawaii DLNR, Kalanimoku Building, 1151 Punchbowl St., Honolulu, HI 96813. Tel: (808) 587-0320 Web: <http://www.state.hi.us/dlnr>.

[12] Idaho

[a] Overview

The Governor is Idaho's Natural Resources Trustee, although he or she may delegate trustee authority to other state officers on a case-by-case basis. Idaho has no dedicated NRD office and has no staff that focus on the issue. Idaho began pursuing NRD claims with respect to mining sites in 1983. Since then, Idaho has settled a total of four NRD cases, with restoration work in one case, Blackbird Mine, ongoing. Idaho has not used private attorneys to pursue NRD claims in the past, but may consider doing so in the future. There is no state statute authorizing NRD recovery.

[b] Major Matters

Bunker Hill Mining Superfund Site — This site in the Coeur d'Alene Basin was historically one of the largest mining sites in the world. In all, according to the state, more than 100 million tons of mining waste were deposited in the area's river system. More than 15,000 acres of wildlife habitat contain sediments/soils which are acutely toxic to a waterfowl, and lead poisoning is responsible for a significant number of waterfowl deaths each year. Twenty-one of the twenty-four species of birds evaluated are at risk from the elevated metals. The state reports that due to the contamination, about 20 miles of streams are unable to sustain a reproducing fish population and about 10 miles of tributaries have virtually no aquatic life at all. In 1987, the state settled its NRD claims for \$4.5 million. The NRD case remains ongoing for other trustees, however, including the Coeur D'Alene tribe.

Blackbird Mine Superfund Site — Another large mining site in the Panther Creek watershed, this site involved injuries to surface water and wildlife, particularly the threatened Chinook salmon. The case settled in 1995, with the state and federal trustees imposing a series of restoration projects on the responsible parties. Of note, the NRD assessment for this site had to account for the impact of dams on the return of salmon to the affected streams.

[c] Contact Information

Curt Fransen, Deputy Attorney General, 2005 Ironwood Parkway, Suite 120, Coeur D'Alene, ID 83814. Tel: (208) 769-1589.

[13] Illinois

[a] Overview

The Illinois cotrustees for NRD claims are the Illinois Department of Natural Resources and the Illinois Environmental Protection Agency, which began overseeing NRD claims in 1998. Illinois Department of Natural Resources employs four staff members to work on NRD claims, with additional technical support from other state offices. Generally, Illinois trustees follow DOI or NOAA procedures when assessing NRD. Illinois also frequently uses habitat equivalency analysis. Illinois pursues NRD under federal authorities; there is no state statute authorizing NRD recovery.

Illinois has settled six NRD cases for a total recovery of \$430,187, and is currently pursuing approximately twenty additional matters. The bulk of the funds recovered by Illinois have been applied to restoration projects. Five of the six settled matters involved chemical or oil spills that occurred after 1995. Pending matters are a mixture of cases involving recent spills and NRD assessments being conducted in conjunction with the remediation of Superfund Sites. The state is represented by the Office of the Attorney General and does not use private counsel.

[b] Major Matters

Marathon Oil Company — Marathon operates common carrier pipelines for transporting crude and refined petroleum products. From 1977 to 1999, according to the state, numerous spills and leaks from the pipeline have occurred impacting 29 counties in southern Illinois. Allegedly affected resources included soil, surface water, groundwater and wildlife. The parties settled in 2001 and the responsible parties are in the process of undertaking a restoration project.

Millhurst Fen — In 1998, Lakehead Pipeline Company released bentonite into Millhurst Fen, a wetland area that is a habitat for a number of endangered plant and animal species. As part of the settlement, Lakehead agreed to a package of compensation and restoration projects, including brush cutting and herbicide application to prevent exotic species encroachment.

West Shore Pipeline — West Shore released 15,000 gallons of fuel oil in 1999, resulting in damage to soil, surface water, groundwater, wildlife, and aquatic life. As reported by the state, the spill affected nearly half of a nearby wetland. The case was settled in 2002 and restoration work is in the planning stages.

[c] Contact Information

Illinois Department of Natural Resources: Office of Realty & Environmental Planning, Division of Resource Review & Coordination, Contaminant Assessment Section, One Natural Resources Way, Springfield, IL 62702-1271. Tel: 217-785-5500, Fax: 217-524-4177. Web: <http://www.dnr.state.il.us/>.

Illinois Environmental Protection Agency: Michelle Ryan, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, IL 62794-9276. Tel: (217) 782-5544. E-mail: michelleryan@epa.state.il.us. Web: <http://www.epa.state.il.us/>.

[14] Indiana

[a] Overview

Trustee responsibilities in Indiana are shared between the Department of Natural Resources and the Department of Environmental Management. A Memorandum of Understanding exists between the Indiana trustees and the U.S. Fish and Wildlife Service, under which the three agencies agreed to work jointly on all NRD claims. Between the two state agencies, three staff members work full time on NRD issues, with support from additional staff members as needed. Indiana state statutes concerning NRD include IC 14-22-10-6 (Liability for Destruction of Wild Animals by Pollutant); IC 13-25-4 (Hazardous Materials); IC 13-24-1 (Petroleum Releases).

[b] Major Matters

White River — In December of 1999 and January 2000 Guide Corp. allegedly used excessive chemicals to treat waste water, which it subsequently discharged to the City of Anderson's publicly-owned treatment works. The resulting toxic discharge, according to the state, killed approximately 5 million fish in the White River. Guide settled with state and federal authorities for a total of nearly \$14 million, \$6 million of which was for NRD. Restoration projects include fish restocking, ecological studies, education, and property acquisition.

Grand Calumet — Over a period of decades, several factories, refineries, and other facilities released pollutants to the Grand Calumet River, resulting in degradation of the river sediments and water quality; wildlife has also been affected. The eastern five miles of the Grand Calumet River were particularly affected by releases from U.S. Steel's Gary Works, according to the state. Contaminants of concern include PCBs, oil, benzene, cyanide, and heavy metals. U.S. Steel settled with state and federal authorities in 1998. In addition to a \$30 million dredging projected, U.S. Steel will support restoration of in-stream habitat for fish and aquatic

invertebrates in the river, enhance riparian habitat along the waterway, and provide monitoring. The company also agreed to acquire 216 acres of land to be added to state and national parks.

[c] Contact Information

Indiana Department of Natural Resources: Anne Mankowski, 402 W. Washington St., Room W-255L, Indianapolis, IN 46204. Tel: (317) 232-1291. Fax: (317) 233-9376. E-mail: amankowski@dnr.in.gov. <http://www.in.gov/dnr/>

Indiana Department of Environmental Management: James R. Smith, Natural Resource Damage Coordinator, 100 N. Senate Ave., N-1101, Indianapolis, IN 46204. Tel: (317) 232-3451. Fax: (317) 234-0428. E-mail: jsmith@idem.in.gov. <http://www.in.gov/idem/>

[15] Iowa

[a] Overview

There is not a dedicated office in Iowa for NRD claims. This function is performed by the Fisheries and Wildlife Bureau in conjunction with the Legal Bureau, both of the Iowa Department of Natural Resources (IDNR). The state has been conducting NRD activity since 1996, and is currently pursuing four matters, all informally. There is no authority in Iowa to retain private counsel for NRD matters. The state statutory authority for NRD claims is Iowa Code 481A.151 (2005).

[b] Major Matters

Iowa's NRD program is exclusively focused on fish kill restitution. Since 1996, there have been 106 claims for restitution for fish kills. The total recovery since 1996 is approximately \$647,911. The program is handled through the Fisheries and Legal Bureau. The Fisheries Bureau is notified by a field office of a fish kill. A natural resources technician investigates and assesses the damage. The value of the fish is calculated and sent to the Legal Bureau, along with the administrative costs. The Legal Bureau requests restitution from the entity causing the fish kill. For more information on fish kills: www.iowadnr.com/water/tmdlwqa/wqa/fishkill.html.

[c] Contact Information

Iowa Department of Natural Resources: Joelyn L. Gast, Paralegal, Legal Bureau, Wallace Bldg. – 5th Floor 502 E. 9th Street, Des Moines, IA 50319. Tel: (515) 281-5918. Web: www.iowadnr.com.

[16] Kansas

[a] Overview

Kansas does not have a dedicated office for NRD claims, nor does it have specific statutory authority other than federal law for pursuing NRD claims. The state trustee is the Kansas Department of Health and Environment (KDHE). The KDHE has been pursuing NRD claims for the last 4 or 5 years, utilizing a habitat equivalency analysis to calculate damages. The state is handling approximately 4 matters currently, including one that is subject to a consent decree. The damaged resources include groundwater, surface water, soil and aquatic biota. No damages have been recovered to date. While the NRD program in Kansas is small, the Department's policy is that "KDHE will consider NRDA actions when the remedial or removal response does not return the natural resources to pre-release conditions in a timely manner." Natural Resource Damage Assessments, BER-ARS-044, April 1, 2002. There is no authority in Kansas to utilize private counsel on behalf of the state.

[b] Contact Information

Kansas Department of Health and Environment: KDHE's homepage: Leo Hennings, Division of Environment, 1000 SW Jackson, Suite 410, Topeka, KS 66612-1367. Tel: 785-296-1914. Web: <http://www.kdheks.gov>.

[17] Kentucky

[a] Overview

Kentucky's Natural Resources Trustee is the Secretary of the Environmental and Public Protection Cabinet. Kentucky has not reported significant NRD activity, nor does Kentucky appear to have a state NRD statute.

[b] Contact Information

Kentucky Environment and Public Protection Cabinet, Office of Public Outreach, 500 Mero Street 5th Floor, CPT, Frankfort, KY 40601. Tel: (502) 564-3350. Fax: (502) 564-3354. E-mail: Cynthia.Schafer@ky.gov. Web: <http://www.environment.ky.gov/>.

[18] Louisiana

[a] Overview

Louisiana has a dedicated NRD office, the Louisiana Oil Spill Coordinator's Office ("LOSCO"), which was created in 1991. LOSCO has eleven employees, and handles NRD claims related to Oil Spills. Since its inception, LOSCO has pursued over twenty NRD claims for spills and other oil discharges, generally resulting in a requirement that responsible parties perform restoration

projects. LOSCO operates under the Louisiana Oil Spill Prevention and Response Act of 1991, La. Rev. St. 30:2451, et seq., which authorizes the Oil Spill Coordinator to determine the amount of natural resource damages resulting from unauthorized discharges of oil. La. Rev. St. 30:2480(A). By submitting the damages assessment to court in a written report, the coordinator's determination creates a rebuttable presumption of the amount of damages, however the "facts surrounding the cause of the unauthorized discharge of oil as set out in the report shall be subject to de novo review." La. Rev. St. 30: 2480(B). LOSCO has promulgated regulations for NRD assessment codified at La. Admin. Code 43: Part XXIX, Chapter 1. Although responsible parties in Louisiana face the same liability scheme as established by the Oil Pollution Act of 1990 (P.L. 101-380), Louisiana encourages mediation to settle disputed natural resource damage assessments. La. Rev. St. 30: 2480(C)(9).

Additionally, several other Louisiana agencies, including the Department of Environmental Quality, the Department of Natural Resources, and the Department of Wildlife and Fisheries are also NRD trustees. Louisiana does not use private attorneys to pursue NRD claims.

[b] Major Matters

Marathon Pipeline — This matter involved a spill of 475,000 gallons of gasoline into the Blind River, resulting in injuries to fish, wildlife, and air and water quality. As part of a settlement, Marathon purchased property to secure replacement resources and provided public education.

Texaco Pipeline — In 1997, a Texaco pipeline ruptured, spilling nearly 275,000 gallons of oil into Lake Barre. According to the state, the spill resulted in oil slicks covering large tracts of marsh and dead wildlife. NRD were assessed using the habitat equivalency analysis method developed for the North Cape oil spill (see entry under Rhode Island). Restoration efforts including planting 18.6 acres of marsh and the payment of assessment costs.

[c] Contact

Louisiana Oil Spill Coordinator's Office: Gina Muhs Saizan, Natural Resource Specialist, 150 Third Street, Suite 405, Baton Rouge, LA 70801. Tel: (225) 219-5800. Fax: (225) 219-5802. Web: www.losco.org.

Louisiana Department of Wildlife and Fisheries: Terry Romaine, P.O. Box 98000, Baton Rouge, LA 70898-9000. Tel: (225) 765-2394. Web: <http://www.wlf.state.la.us/apps/netgear/page1.asp>.

[19] Maine

[a] Overview

Maine has multiple Natural Resources Trustees, including the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, and the Department of Conservation. The Department of Environmental Protection is

the lead agency for NRD matters. Maine began its NRD work in the early 1990s with marine oil spills. Maine gets some funding for NRD work through the Maine Oil Spill Fund.

[b] Major Matters

Julie N Oil Spill — Maine's first major NRD case was the Julie N oil spill in 1996. The tanker Julie N struck a bridge and spilled nearly 180,000 gallons of heavy fuel oil into the Fore River. Some of the oil made its way to Stroudwater Marsh and Long Creek. Fortunately, 78% of the oil was recovered. Affected resources included surface water, sediments, marine vegetation, and birds. The restoration plan included 130 acres of habitat enhancement, as well as habitat acquisition. The settlement was valued at \$1 million plus response costs.

[c] Contact Information

Maine Department of Environmental Protection: 17 State House Station, Augusta, Maine 04333-0017, Tel: (207)287-7688 or (800)452-1942. Web: <http://www.maine.gov/dep/index.shtml>

Maine Department of Conservation: 22 State House Station, Augusta, ME 04333-0022. Tel:(207) 287-2211. Fax: (207) 287-2400. Web: <http://www.maine.gov/doc/index.shtml>.

Maine Department of Inland Fisheries and Wildlife: Richard L. Dressler, Supervisor, Wildlife Resource Assessment Section, 650 State Street, Bangor, ME 04401. Tel: (207) 941-4467; Fax.: (207) 941-4450; e-mail: richard.dressler@maine.gov. Web: <http://www.state.me.us/ifw/>.

Maine Department of Marine Resources: 21 State House Station, Augusta, ME 04333-0021. Tel: (207) 624-6550. Fax: (207) 624-6024. Web: <http://www.maine.gov/dmr/index.htm>.

[20] Maryland

[a] Overview

The Department of Environment and the Department of Natural Resources are co-trustees for Maryland. Maryland has no dedicated office, employees, or budget for pursuing NRD claims. Maryland does not use private attorneys on NRD matters and does not have a state NRD statute.

[b] Major Matter

PEPCO Spill — The state has had just one NRD matter related to an oil spill by Potomac Electric Power Company in 2000. The spill occurred at PEPCO's Chalk Point power plant and resulted in alleged damage to seventy-six acres of wetlands and 10 acres of shoreline. Maryland, along with federal trustees, pursued an NRD claim, which resulted in a \$2.6 million dollar settlement for restoration of wetlands, oyster beds, waterfowl nesting areas, and terrapin habitats.

[c] Contact Information

Maryland Department of the Environment: Alan Williams, Program Manager, Emergency Response & Planning Program, 1800 Washington Blvd., Baltimore, MD 21230. Tel: (410) 537-3994. E-mail: awilliams@mde.state.md.us. Web: <http://www.mde.state.md.us/>.

Maryland Department of Natural Resources: 580 Taylor Avenue, Tawes State Office Building, Annapolis, MD 21401. Tel: (410) 260-8100. Web: http://www.dnr.state.md.us/sw_index_flash.asp.

[21] Massachusetts

[a] Overview

The Secretary of the Executive Office of Environmental Affairs (EOEA) has been designated by the Governor as trustee for natural resources of the Commonwealth of Massachusetts. The Secretary has the authority under state (Massachusetts Oil and Hazardous Materials Release Prevention and Response Act (M.G.L. c. 21E) and federal environmental statutes to assert a claim for NRD. In Massachusetts, responsible parties are jointly and severally liable for natural resource damages resulting from releases or threatened releases of hazardous materials. M.G.L. c. 21E § 5(a). The statute of limitations provision for NRD claims in Massachusetts stipulates that claims be filed within three years from the date that the natural resource damage and its relationship to a release of a hazardous substance is discovered, or within three years from the date the state determines the party responsible for the release, whichever is later. Alternatively, if the state incurs response costs, NRD claims may be filed within five years from the date at which the state incurs all response costs, or five years from the date when the state determines a party responsible for a release for which it has incurred response costs, whichever is later. M.G.L. c. 21E § 11A.

The NRD program in Massachusetts has a modest budget with two full time employees, a Director and a Case Manager. However, the program does have access to other EOEA staff as needed. Further, the EOEA states that it is “committed to implementing a comprehensive NRD program which requires polluters to restore injured resources and to compensate the public for the inability to use and enjoy those resources.” Massachusetts has not engaged private counsel for NRD enforcement. Massachusetts has begun to develop a simplified groundwater damages assessment model to expedite settlement of groundwater NRD cases.

[b] Major Matters

To date, Massachusetts has negotiated 9 NRD settlements, recovered over \$45 million, and restored over 580 acres. The state plans to have several additional settlements within the next year. One matter that the state is currently pursuing is the spill of an estimated 98,000 gallons of No. 6 oil in Buzzards Bay. Below are the 9 settled matters and the recovery by the State:

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Massachusetts Site	Settlement Year	Injured Resources	NRD Recovery
New Bedford Harbor	1992	Water column, sediments, shellfish, birds, anadromous fish, recreational fishing, beach usage	\$20,200,000
Charles George Landfill	1993	Landfill pollution, gases, and leachate contamination, migratory birds, fish	\$1,200,000
PSC Resources	1995	Groundwater and wetlands	\$157,000
Nyanza/Sudbury River	1998	Surface water (riverine habitat), wetlands, fisheries other wildlife, recreational use	\$3,100,000
Hallmark/Mystic River	1999	Surface water (riverine habitat), recreational use	\$30,000
General Electric / Housatonic River	2000	Ground and surface water, nesting habitats, recreational fishing and boating, various aquatic organisms and birds	\$19,700,000
Sulfuric Acid Spill / North River	2003	Various aquatic resources, aquatic fish, amphibians, invertebrates, and plant species	\$30,000
Posavina Oil Spill / Chelsea Creek	2004	Coastal land and habitat, salt water vegetation, migratory birds, fish	\$142,000
Coal Tar Deposits/CT River	2004	Various aquatic resources in the Connecticut River, endangered species	\$500,000
Total			\$45 Million

[c] Contact Information

Massachusetts Executive Office of Environmental Affairs: Tanya D. Baker, Natural Resource Damages Case Manager, 100 Cambridge Street, Suite 900, Boston, MA 02114-2524. Tel: (617) 626-1082. Web: http://www.mass.gov/envir/nrd/nrd_home.htm.

[22] Michigan

[a] Overview

In Michigan, the Department of Natural Resources in conjunction with the Attorney General's Office and the Department of Environmental Quality, acts as the Natural Resources Trustee. Michigan has no dedicated office for NRD and no NRD budget. Four staff members at the

Department of Natural Resources work on NRD issues. The state is currently pursuing at least four NRD claims. Michigan does not use private attorneys. The state is considering a groundwater initiative similar to New Jersey's.

Michigan's main NRD statute is MCL 324.20126a. A number of other Michigan environmental statutes also include NRD provisions: MCL 324.5530(3) (air pollution); MCL 324.9121(6) (soil erosion and sediment control); MCL 324.3115(2) (water resources); MCL 324.11502(9) (solid waste management); MCL 324.21302(d) (leaking underground storage tanks); MCL 324.11151(9) (hazardous waste); MCL 324.31525(5), (7) (dam safety).

[b] Major Matters

Kalamazoo River — An NRD assessment is currently ongoing with respect to PCB contamination in the Kalamazoo River. The main resources of concern are surface water, groundwater, fish, and bird. Use values to be assessed include wildlife viewing, fishing, and dredging or dam removal restrictions.

Tittabawassee River — The Tittabawassee River is a major ongoing NRD assessment in Michigan involving dioxins. According to the state, Dow Chemical is the primary potentially responsible party.

[c] Contact Information

Michigan Department of Natural Resources: Sharon Hanshew, Supervisor, Habitat Unit for Fisheries Division, P.O. Box 30446, Lansing, MI 48909-7946. Tel: (517) 335-4058. Web: <http://www.michigan.gov/dnr>.

Michigan Department of Environmental Quality, Remediation and Redevelopment Division, P.O. Box 30426, Lansing, MI 48909-7926. Tel: (517) 373-9837. Web: <http://www.michigan.gov/deq>.

[23] Minnesota

[a] Overview

The Department of Natural Resources and the Pollution Control Agency are co-Natural Resource Trustees in Minnesota. There are two staff members who each spend approximately fifty percent of their time on NRD issues. Minnesota has settled three NRD cases and is currently pursuing five more. All of these cases involve harm to surface or ground water. In addition to the state's NRD program, the Pollution Control Agency runs the Minnesota Closed Landfill Program. As part of that program, the Pollution Control Agency collects NRD related to closed landfills. For additional discussion of the Minnesota Closed Landfill Program, including the methodologies used to calculate NRD, see the discussion in section 32B.08[4] of this Chapter. Minnesota does

not use private attorneys to pursue NRD claims. Minnesota's NRD statute is codified at MN. Statutes Chapters 115 and 116.

[b] Contact Information

Minnesota Department of Natural Resources: 500 Lafayette Road, St. Paul, MN 55155-4040. Tel: (651) 296-6157 or (888) 646-6367. <http://www.dnr.state.mn.us/index.html>.

Minnesota Pollution Control Agency: Tel: (651) 296-6300 or (800) 657-3864. <http://www.pca.state.mn.us/>.

[24] Mississippi

[a] Overview

The Executive Director of the Department of Environmental Quality is the Mississippi Natural Resources Trustee. Mississippi has no dedicated NRD budget or staff but dedicates resources on an as-needed basis. Since its inception in 1992, Mississippi's NRD program has handled approximately 15 claims, all but one of which settled informally. The majority of Mississippi's NRD cases were in the 1990's; only 2 cases have been settled or resolved since 2000. In one major case, Mississippi used habitat equivalency analysis to assess damages. Mississippi is not currently pursuing any groundwater NRD cases. The state has the authority to retain private counsel to pursue NRD claims. Mississippi has a limited NRD statute that imposes liability on responsible parties to restock fish and replenish wildlife when loss of fish or wildlife has been caused by a violation of the state's environmental statutes. Miss. Code Ann. § 49-17-43.

[b] Major Matters

Genesis Pipeline Spill — In December 1999, a pipeline owned by Genesis Pipeline USA, L.P., ruptured spilling 336,000 gallons of crude oil into the Leaf River. The spill caused significant damages to surface water, sediments, shoreline habitats, and wildlife. In addition to paying \$20 million in cleanup costs, Genesis settled NRD claims by the state and federal trustees for a total of \$3 million. The NRD recovery is primarily being used for streambed and wetland restoration, as well as a wood duck nesting project and groundwater monitoring.

[c] Contact Information

Mississippi Department of Environmental Quality: Mary Jacq Easley, Senior Attorney, Legal Division, P.O. Box 20305, Jackson, Mississippi 35289. Tel: (601) 961-5369. E-mail: mary_jacq_easley@deq.state.ms.us. Web: <http://www.deq.state.ms.us/>.

[25] Missouri

[a] Overview

The Director of the Department of Natural Resources is the Natural Resources Trustee in Missouri. The Department has one staff person dedicated to NRD issues and uses other staff members as necessary. Missouri's costs related to NRD are paid from its Natural Resources Protection Fund. Since 1998, Missouri has concluded five NRD cases, including one that was litigated in state court. Missouri usually uses habitat equivalency analysis to assess damages; it has also relied on the New Jersey groundwater formula for some bankruptcy claims. Missouri does not use private attorneys to pursue NRD claims. There is a state statute that authorizes NRD recovery, Missouri Revised Statutes § 644.096.

[b] Major Matters

Jasper County Lead Mining Superfund Site — This site, also known as the Oronogo-Duenweg Mining Belt, involves hundreds of lead and zinc mines in southwestern Missouri. A preliminary site assessment prepared by the Missouri Department of Natural Resources estimates that large areas of land and surface water are contaminated with lead, zinc, and cadmium above applicable standards. Concentrations of these contaminants in shallow groundwater aquifers exceed background levels by as much as an order of magnitude. The state is currently in the process of preparing an assessment plan for this site.

Cominco/Halliburton — The Department of Natural Resources received a cooperative settlement for seven lead and copper metal concentrate spill sites for which Cominco American, Inc. and Halliburton Energy Services, Inc. are allegedly responsible. Of note, these settlements occurred at the instigation of the responsible parties.

[c] Contact Information

Missouri Department of Natural Resources: Frances Klahr, NRD Coordinator, P.O. Box 176, Jefferson City, MO 65102-0176. Tel: 573-522-1347. Web: <http://www.dnr.mo.gov/env/hwp/sfund/spf.htm>.

[26] Montana

[a] Overview

The Montana Natural Resource Damage Program (NRDP) office was established in 1990. The office consists of two attorneys, three environmental scientists, a restoration program chief, a program specialist and one administrative support person. The entire focus of the Montana program is the Upper Clark Fork River Basin (UCFRB), which is divided into nine areas. The program's litigation budget in 2005 was \$660,000. Montana common law provides authority for the state to retain private counsel in a NRD action. Early in the *Montana v. ARCO* matter, the

state retained outside counsel, but does not currently. The Montana Code, 75-10-701, provides the state with the statutory authority to seek natural resource damages. Under the Montana Code, responsible parties are jointly and severally liable for natural resource damages “caused by” or “resulting from” the release or threatened release of hazardous substances. M.C. 75-10-715. However, a responsible party “has a defense and is not liable” for natural resource damages if the party can show that the state did not provide proper notice before pursuing remedial actions. 75-10-715 (5)(a).

[b] Major Matters

Atlantic Richfield Company — The NRDP is responsible for litigating the *Montana v. ARCO* matter, originally filed in 1983 in U.S. District Court, but stayed until 1991. The lawsuit alleges that decades of mining and mineral processing operations in and around Butte and Anaconda released substantial quantities of hazardous substances into the Upper Clark Fork River Basin between Butte and Milltown and that these hazardous substances extensively degraded the area’s natural resources. After 1991, the state commenced a natural resource damage assessment and restoration plan. The assessment alleged widespread injuries to natural resources including 600,000 acre-feet of groundwater, fish injuries (trout) and wildlife habitat injuries. In total, the State’s claim was \$764 million, \$342 million of which was restoration cost damages, \$410 million of which was compensable value damages, and \$12 million of which was assessment and legal costs. In 1999, the State and ARCO reached a settlement of many of these claims. Specifically, ARCO agreed to pay approximately \$128 million for natural resource damages. This settlement, however, did not include three areas of the Basin; namely, Anaconda Uplands, Butte Area One and the Upper Clark Fork River. The State maintains that the restoration damages in these three areas is approximately \$180 million. Litigation regarding these areas is on-going. In May 2003, the U.S. District Court dismissed the state’s Anaconda Uplands claim on the grounds that all of the restoration damages sought arose “wholly before” December, 1980. 266 F. Supp. 2d 1238, 1244–45 (D. Mont. 2003). The state contends that the decision was wrongly decided and has asserted that it intends to appeal the Court’s decision. For more details on the litigation: www.doj.state.mt.us/lands/naturalresource/lawsuithistory.asp.

[c] Contact Information

Montana Natural Resource Damage Program, Montana Department of Justice, 1301 East Lockey, P.O. Box 201425, Helena, MT 59620-1425. Phone: (406) 444-0205. Fax: (406) 444-0236. Web: www.doj.state.mt.us/lands/naturalresource.asp.

[27] Nebraska

[a] Overview

The Natural Resource Trustee in Nebraska is the Director of the Department of Environmental Quality. Nebraska has not pursued NRD claims in the past and there is no state NRD statute.

[b] Contact Information

Nebraska Department of Environmental Quality: Annette Kovar, Legal Counsel, 1200 "N" Street, Suite 400, PO Box 98922, Lincoln, Nebraska 68509-8922. Tel: (402) 471-2186. Fax: (402) 471-2909. Web: <http://www.deq.state.ne.us/>.

[28] Nevada

[a] Overview

The Administrator of the Division of Environmental Protection and the Director of the Department of Wildlife are co-trustees for natural resources in Nevada. Nevada has no formal NRD program and very little staff time is dedicated to NRD matters. Despite the informality of its program, Nevada is pursuing a handful of NRD matters in conjunction with federal and tribal trustees. The state does not use private attorneys to pursue NRD claims and does not have a state NRD statute.

[b] Contact Information

Nevada Division of Environmental Protection: David Emme, Environmental Information and Planning, 901 S. Stewart St., Suite 4005, Carson City, NV 89701-5249. Tel: (775) 687-9307. E-mail: demme@ndep.nv.gov. Web: <http://www.ndep.nv.gov/>.

Nevada Department of Wildlife: Rich Haskins, Fisheries Bureau, 1100 Valley Rd., Reno, NV 89512. Tel: (775) 688-1569. Web: <http://www.ndow.org/index.shtm>.

[29] New Hampshire

[a] Overview

The Department of Environmental Service and the Department of Resources and Economic Development are the Natural Resource Trustees in New Hampshire. New Hampshire does not currently have an NRD program, although one is in development. New Hampshire has worked with federal trustees in the past on NRD issues. As part of its NRD activities, New Hampshire has investigated NRD related to air pollution. There is no state statute authorizing NRD recovery in New Hampshire.

[b] Contact Information

New Hampshire Department of Environmental Services, 29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095. Tel: (603) 271-3503, Fax: (603) 271-2867.

[30] New Jersey

[a] Overview

The Commissioner of the Department of Natural Resources in New Jersey's Natural Resources Trustee. The Office of Natural Resource Restoration is the office within the Department of Environmental Protection dedicated to NRD issues. New Jersey uses a variety of assessment methodologies. As discussed above, New Jersey pioneered a simplified groundwater NRD assessment formula. *See supra* § 32B.08[4]. New Jersey has state NRD authority under the New Jersey Water Pollution Control Act, N.J.S.A. § 58:10A-10, and the New Jersey Spill Compensation and Control Act, N.J.S.A. § 58:10-23.11g. In New Jersey, responsible parties are strictly liable, jointly and severally, for the "costs of restoration and replacement...of any natural resources damaged or destroyed by a discharge." N.J.S.A. §58:10-23.11g. In 2003, New Jersey embarked on a major natural resource initiative and claims to be systematically evaluating all contaminated sites in New Jersey for possible NRD liability. New Jersey has retained private law firms to pursue NRD claims on its behalf.

[b] Major Matters

Lower Passaic River — The state has launched an ambitious plan to bring claims related to the lower Passaic River, which some observers estimate to be valued at as much as \$950 million.¹ In September 2003, the Department of Environmental Protection issued a directive to sixty-six PRPs ordering them to conduct an NRD assessment in the lower Passaic River. The Passaic River, which flows into Newark Bay is among the most industrialized waterways in New Jersey, and the state's directive purported to address as many as 4,000 potential NRD claims. The use of directive authority to require an NRD assessment was unprecedented and has been subject to legal challenge. If the Department's directive authority is upheld, the recipients will have to either perform an assessment or face the possibility of treble damages for the assessment costs should the state do the work. At present, the matter remains mired in litigation with no clear resolution on the horizon.

Public Service Electric & Gas Co. — In 2005, Public Service Electric & Gas Co. settled NRD claims with respect to several contaminated sites. Under the settlement the company donated certain land to the state in compensation for damaged resources.

¹ *See generally In re Lower Passaic River*, , Directive No. 1: Natural Resource Injury Assessment & Interim Compensatory Restoration of Natural Resource Injuries (N.J. Dep't of Env'tl. Protection Sept. 19, 2003), *available at* http://www.state.nj.us/dep/nrr/directives/passaic_dir01.pdf; *see also* Edward F. McTiernan, et al., *An Overview of New Jersey's Natural Resource Damage Program*, *Environmental-Resource.com* (Nov. 15, 2004), *available at* <http://www.environmental-resource.com/report.asp?id=337&page=8> (last visited Mar. 25, 2006).

Exxon Litigation regarding Compensatory Damages -- In June, 2007, the Appellate Division of the Superior Court of New Jersey held that the State could assert a claim under the New Jersey Spill Act for the loss of use of natural resources caused by the release of hazardous substances. In doing so, the Court reversed a lower court's ruling that found that there was no strict liability under the Spill Act for such damages. The Appellate Division relied, in part, on the state's long history of asserting claims for natural resource restoration as reflected in numerous technical rules and guidance documents. The court also relied upon the expansive scope of the state statute and the legislative directive to construe the statute liberally. Within this context, the Court accepted the NJ Department of Environmental Protection's interpretation of the statute. In particular, the Court was persuaded by the definition of "cleanup costs" which includes "reasonable measures to prevent or mitigate damage to the public health, safety or welfare." According to the Court, "mitigation" of environmental harm includes compensation for past natural resources that were adversely impacted by the contamination. To be sure, this decision will be viewed as a significant development for the State of New Jersey. Nonetheless, many legal questions remain about the State's program including the proper use of the state's well-known groundwater valuation formula, the extent to which the State is precluded by CERCLA from using money recovered for attorney's fees and the viability of numerous other defenses.

[c] Contact Information

New Jersey Department of Environmental Protection, Natural and Historic Resources, Office of Natural Resource Restoration, P.O. Box 404, Station Plaza 5, Trenton, NJ 08625-0404. Tel: (609) 984-5475. Fax: (609) 984-0836. E-mail: onrr@dep.state.nj.us. Web: <http://www.state.nj.us/dep/nrr/>.

[31] New Mexico

[a] Overview

The Office of the Natural Resources Trustee performs trustee responsibilities in New Mexico. The Office was established in 1993 and employs four full-time staff members. New Mexico's state NRD statute is the Natural Resources Trustee Act, NMSA 1978, §§ 75-7-1 et seq.

[b] Major Matters

Albuquerque ATSF Site — This site involved NRD related to a former Atchison Topeka & Santa Fe Railway railroad tie treating plant. The damages were primarily related to injuries to groundwater and wildlife habitat. The state and federal trustees settled their NRD claims for \$1,100,000, which will be used for restoration projects that enhance or preserve groundwater and migratory bird habitat.

Molycorp Mine Facility — Molycorp operated a major molybdenum mine in Questa, NW. According to the state, contamination caused by runoff and mine tailings has affected the surrounding area, including the Red River. Molycorp is currently cooperating with state and federal trustees in a restoration-based natural resource damage assessment process.

Sparton Technology Site — Sparton Technology operated an electronics manufacturing facility in Albuquerque. Discarded solvents and plating wastes from the site reportedly resulted in substantial soil and groundwater contamination in the vicinity of the facility. In 2000, the state settled its NRD claims against Sparton for \$1 million, primarily for injury to groundwater. The settlement funds are being used for groundwater restoration projects.

State of New Mexico v. General Electric Company, et al, 467 F.3d 1223 (10th Cir. 2006) -- The State of New Mexico brought a claim in 1999 seeking \$5 billion in natural resource damages resulting from contaminated groundwater at the South Valley Superfund Site in Albuquerque, New Mexico. The Site has been undergoing groundwater remediation since the late 1980s under the direction of the U.S. EPA (and with the concurrence of the New Mexico environmental agency). Notwithstanding these cleanup efforts, New Mexico asserted that it had suffered, or would suffer in the future, significant natural resource damages, for which it was entitled to compensation. The State sought to recover funds not for restoration but for the general treasury. The Court had three main holdings: (1) The Tenth Circuit held that the natural resource damages provisions of CERCLA provide that money recovered is “available only to restore, replace, or acquire the equivalent of such natural resources...” In other words, a State may not use an NRD claim to obtain funds for purposes unrelated to the natural resource injury. To the extent that New Mexico was seeking “an unrestricted award of money damages,” the Tenth Circuit held that its claim was preempted by the CERCLA NRD regime. Otherwise, according to the Court, States could recover natural resource damages but fail to achieve the restoration purposes inherent in the statute. The Tenth Circuit also indicated that it would be improper to use NRD recoveries to pay attorney fees. (2) The Tenth Circuit held that the State’s claim was an impermissible attack on the EPA remedy and that it therefore lacked jurisdiction to hear the challenge. The basis of this holding was Section 9613(h) of CERCLA which provides (with certain exceptions) that once a remedy has been selected, no challenge to the cleanup may occur prior to the completion of the remedy. (3) The Tenth Circuit accepted the general proposition that the State was entitled to such damages. However, since the resource in question was the ability to appropriate groundwater, and since it was uncontested that the maximum extraction of groundwater was being accomplished from the area, the Court found that there was no lost use resulting from contamination. Accordingly, the Court affirmed the lower court’s grant of summary judgment on the State’s loss-of-use damages theory.

[c] Contact Information

New Mexico Office of the Natural Resources Trustee, 610 Gold Avenue SW, Suite 236, Albuquerque, New Mexico USA 87102. Tel: 505.243.8087. Fax: 505.243.6644. E-Mail: elysia.martinez @ state.nm.us. <http://www.onrt.state.nm.us/index.html>

[32] New York

[a] Overview

The Department of Environmental Conservation is New York's Natural Resources Trustee. The Department has a Natural Resource Damages Unit devoted to NRD issues. The NRD Unit's staff includes a biologist, an economist, and a lawyer. The NRD Unit is primarily funded by NRD recoveries. New York has an active program and is currently pursuing approximately thirty-eight NRD matters. To date, New York's NRD program has recovered nearly \$40 million, the bulk of which is being used for restoration projects. Most of the restoration activity has been in New York City or on Long Island.

New York has a state NRD statute codified at N.Y. Navigation Law § 181. In New York, liability for natural resources damages is strict and responsible parties are liable for "the cost of restoration and replacement...of any natural resource damaged or destroyed by a discharge." N.Y. Nav. Law § 181. New York primarily applies the same limits on liability as the Oil Pollution Act of 1990. N.Y. Nav. Law. § 181(3).

[b] Major Matters

Hudson River — In 1997, state and federal trustees issued a Preassessment Screen for NRD in the Hudson River. The screen addressed NRD from several pollutants, but of particular concern was PCB contamination allegedly related to General Electric's plants in Fort Edward and Hudson Falls. Following the Preassessment Screen, the trustees initiated a full scale NRD assessment. That effort is currently ongoing.

St. Lawrence River in Massena — This site is another site involving PCB contamination in a river. According to the state, three potentially responsible parties, General Motors, Alcoa, Reynolds, are jointly funding an NRD assessment. This process is being conducted under the supervision of state, federal, and tribal trustees. Work at this site is also ongoing.

[c] Contact Information

New York Department of Environmental Conservation: Natural Resource Damages Unit, 625 Broadway, Albany, NY 12233. Tel: (512) 402-9512. Web: <http://www.dec.state.ny.us/website/dfwmr/habitat/hoa1b2j.htm>.

[33] North Carolina

[a] Overview

In early 2006, North Carolina designated the Secretary of the Department of Environment and Natural Resources as its Natural Resources Trustee. To date, North Carolina has not pursued any NRD claims.

[b] Contact Information

North Carolina Department of Environment and Natural Resources: 1601 Mail Service Center, Raleigh, NC 27699-1601. Tel: 919-733-4984. Fax: 919-715-3060. Web: <http://www.enr.state.nc.us/>.

[34] North Dakota

North Dakota does not appear to have a state NRD statute or program.

[35] Ohio

[a] Overview

The trustee in Ohio is the Ohio Environmental Protection Agency (OEPA). There are no state laws providing NRD authority. The OEPA has been conducting NRD activity since the early 1990s, currently with one dedicated employee, a risk assessor, and no specific NRD budget. There is support from other professionals as needed. Currently, Ohio is actively pursuing three matters. The total number of cases handled over the history of the program is about eight and the principal lost resources are wildlife and recreational uses. The state does not have authority to retain outside counsel for NRD prosecution. The state is researching potential groundwater claims.

[b] Major Matters

Fernald Uranium Products — The main focus of the state-led NRD efforts appear to be restoration at the Fernald uranium products site, located 18 miles northwest of Cincinnati. The site is over 1000 acres and is undergoing a large cleanup, financed by the Department of Energy. The trustees at the site are the Department of Interior and the Ohio EPA. Ohio sued DOE in 1986 claiming \$206 million in NRD injuries, although the lawsuit was placed on hold shortly thereafter. The trustees have been working with DOE to address NRD as part of the site remediation. The main webpage for information related to the Fernald site is: [www.
http://offo2.epa.state.oh.us/Fernald/Fernald.htm](http://offo2.epa.state.oh.us/Fernald/Fernald.htm).

[c] Contact Information

Ohio Environmental Protection Agency: Brian Tucker, Division of Emergency and Remedial Response, Lazarus Government Center, P.O. Box 1049, 122 South Front Street, Columbus, OH 43216-1049. Tel: (614) 644-3020. Web: <http://www.epa.state.oh.us/>.

[36] Oklahoma

[a] Overview

The Oklahoma trustee for NRD claims is the Secretary of the Environment with most of the NRD enforcement activity occurring at the Department of Wildlife Conservation. The Department commenced NRD work in the mid-1980s related to the Tar Creek Superfund Site. There are no dedicated full-time employees and no budget for the NRD program in Oklahoma.

[b] Major Matters

Tar Creek Superfund Site — The principal NRD site in Oklahoma is the 40 square mile Tar Creek Superfund Site in Ottawa County, Oklahoma. The site is related to lead and zinc mining that occurred in the Tri-State Mining District (Oklahoma, Kansas and Missouri) from the early 1900s to the mid 1970s. According to a recent report commissioned by the Governor, “[n]atural resources potentially affected by contaminants at the Site include, in part, federal and state threatened and endangered species, migratory birds, surface water, ground water, drinking water, plants, fish, biota, wildlife, cultural, agricultural, and terrestrial resources. Natural resources specific to the Tribes include, in part, natural resources used in traditional, cultural, spiritual and/or subsistence practices, such as medicinal herbs, furbearing animals, plants and fish used for ceremonial purposes.” Some estimates for NRD have exceeded several hundred million dollars. See <http://www.deq.state.ok.us/LPDnew/Tarcreek/GovrTaskForce/NRDASubcommitteeFinalReport.PDF>.

[c] Contact Information

Oklahoma Secretary of the Environment: 3800 North Classen Boulevard, Oklahoma City, OK 73118. Tel: (405) 530-8995. Fax: (405) 530-8999. Web: <http://www.ose.state.ok.us>.

Oklahoma Department of Wildlife Conservation, 1801 North Lincoln Boulevard, Oklahoma City, OK 73105. Telephone: (405) 521-4663. Web: <http://www.wildlifedepartment.com/>.

[37] Oregon

[a] Overview

Oregon’s Natural Resources Trustees are the Department of Environmental Quality and the Department of Fish and Wildlife. These agencies began working on NRD claims in 1993. Neither department has any staff dedicated full time to NRD issues, and the state has no budget dedicated to NRD. In addition to state-only cases, Oregon has worked with federal trustees on a number of cases. The total recovery of Oregon’s state program from 1987 to 1996 (when the trustees stopped tabulating this data) was nearly \$1.2 million from fourteen cases. Most of these were fish kills caused by various spills. Oregon has a state statute authorizing NRD recovery, Oregon Rev. Stat. 468b.395, and a regulation for assessing NRD, Or. ADC 635-410.

[b] Contact Information

Oregon Department of Environmental Quality: Jack Wylie, Senior Emergency Response Planner, 811 Southwest 6th Avenue, Portland, OR 97204. Tel: 503-229-5716. E-mail: wylie.jack@deq.state.or.us. Web: <http://www.deq.state.or.us/>.

Rose Owens, Habitat Special Projects Coordinator, Oregon Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303. Tel: 503-947-6085. E-mail: rose.m.owens@state.or.us. Web: <http://www.dfw.state.or.us/>.

[38] Pennsylvania

[a] Overview

The NRD trustees in Pennsylvania are the Pennsylvania Game Commission, the Pennsylvania Department of Conservation and Natural Resources ("PDCNR"), the Pennsylvania Fish and Boat Commission and the Pennsylvania Department of Environmental Protection ("PDEP"). The trustees work together depending upon the site and the nature of the impacted resources. The Game Commission reports that approximately 6 employees work on NRD matters. In addition to the federal statutes, the Pennsylvania Hazardous Sites Cleanup Act ("HSCA") provides authority for NRD claims. Under HSCA, liability is strict for parties that "significantly contribute" to natural resource damages through the release or threatened release of a hazardous substance, including "the reasonable costs of assessing injury, destruction or loss resulting from such a release." HSCA § 702(a). The Game Commission reports that there is no intent by the state to utilize private counsel for NRD claims.

[b] Major Matters

Palmerton Zinc Superfund Site -- The state is currently investigating NRD claims at the Palmerton Zinc Superfund Site in Carbon County, Pennsylvania. The investigation is being led by the Palmerton Natural Resource Trustee Council, which includes all four Pennsylvania trustees in addition to federal trustees. This site, which includes a portion of the Appalachian Trail, is near an historic zinc smelting facility. In this matter, the trustees allege that numerous injuries to both aquatic and terrestrial resources caused by zinc and other metals.

[c] Contact Information

Pennsylvania Department of Environmental Protection: Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101. Web: <http://www.dep.state.pa.us/dep/deputate/airwaste/wm/remserv/nrd/nrdhome.html>.

Pennsylvania Game Commission: 2001 Elmerton Avenue, Harrisburg PA 17110-9797, Tel: (717) 787-4250. Web: <http://www.pgc.state.pa.us>.

Pennsylvania Fish and Boat Commission: 1601 Elmerton Avenue, P.O. Box 67000
Harrisburg, PA 17106-7000. Tel: 717-705-7800. Web:
http://www.fish.state.pa.us/PA_Exec/Fish_Boat/mpag1.htm.

Pennsylvania Department of Conservation and Natural Resources: Rachel Carson State Office
Building, PO Box 8767, 400 Market Street, Harrisburg, PA 17105-8767. Web:
<http://www.dcnr.state.pa.us/>

[39] Rhode Island

[a] Overview

Rhode Island's Natural Resources Trustee is the Director of the Department of Environmental Management. Two staff members within that agency work on NRD issues. Rhode Island's first NRD case was the North Cape Oil Spill in 1996; it was also the first time the state required natural resources restoration. Besides the North Cape spill, the state has only pursued a handful of other claims, mostly related to former military installations. Rhode Island does not use private attorneys to pursue NRD claims. State statutory authority for pursuing NRD is codified at Rhode Island General Laws 46-12.5.1, et seq.

[b] Major Matters

North Cape Oil Spill — This incident involved the spill of approximately 828,000 gallons of home heating oil from the barge North Cape off the coast of southern Rhode Island. According to the state, this spill killed at least 2.9 million lobsters and caused certain areas to be closed to lobstering for five months following the spill. Nearly 400 birds were also killed, as well as numerous clams, crabs, and fish. The trustees estimated these resources would take five years or more to recover. The trustees also quantified injuries to recreational interests, namely boating. Although the short-term impacts were severe, the trustees concluded there was little or no long-term impact. The trustees focused on restoration, requiring the responsible party to, among other things, stock Block Island Sound with 1.5 million adult lobsters to accelerate the lobster population's recovery.

Calf Pasture Point — This major on-going NRD case deals primarily with injuries to groundwater caused by discharges of chemical wastes at a former Naval facility in North Kingstown, Rhode Island. The primary contaminants of concern are chlorinated hydrocarbons and VOCs. A pre-assessment screening prepared by the state trustee estimated NRD at over \$6 million.

[c] Contact Information

Rhode Island Department of Environmental Management: Mary E. Kay, Deputy Chief Legal Counsel, 235 Promenade Street, Providence, RI 02908. Tel: 401-222-6607. Web:
<http://www.dem.ri.gov/>.

[40] South Carolina

[a] Overview

The Governor, the Director of the Department of Natural Resources, and the Commissioner of the Department of Health and Environmental Control share trusteeship responsibilities in South Carolina. South Carolina has no dedicated NRD office, but draws from the resources of the trustee agencies as necessary. The state is currently pursuing several NRD claims, including two court actions. Resources involved in past cases have included groundwater, surface water, and freshwater fisheries. South Carolina primarily uses habitat equivalency analysis for NRD assessments. It uses a modified form of the New Jersey methodology for groundwater NRD. South Carolina's state NRD statute is S.C. Code Ann. § 44-56-200 (2002 & Supp. 2005).

[b] Major Matters

Twelvemile Creek/Lake Hartwell — The Sangamo–Weston plant site, a capacitor manufacturing plant in Pickens, South Carolina operated from 1955 to 1987. During this time, according to the state, significant PCB contamination was released from the plant into Twelvemile Creek, Lake Hartwell, and surrounding areas. Schlumberger Technology Corp. is the corporate successor to Sangamo-Weston. In January 2006, Schlumberger settled NRD claims brought by state and federal trustees with respect to the site for \$11.8 million. Schlumberger agreed to spend an additional \$8-10 million to remove two hydroelectric dams from Twelvemile Creek and to conduct restoration projects.

[c] Contact Information

South Carolina Department of Natural Resources: Office of Chief Counsel, P.O. Box 167, Columbia, SC 29202. Tel: (803) 734-4006. Web: <http://www.dnr.sc.gov/>.

South Carolina Department of Health and Environmental Control: Richard A. Haynes, Manager, Federal and Drycleaning Remediation Section, Bureau of Land & Waste Management, 2600 Bull Street, Columbia, SC 29201. Tel: (803) 898-3432. Web: <http://www.scdhec.net/>.

[41] South Dakota

[a] Overview

South Dakota's Natural Resources Trustee is the Secretary of the Department of Environment and Natural Resources. South Dakota has no dedicated NRD staff. South Dakota has pursued one claim in conjunction with federal and tribal trustees. That case, *South Dakota v. Homestake Mining Company*, involved damage to surface and ground water, primarily from metals. The settlement required Homestake to transfer back to the state certain water rights and to pay \$4 million in damages, a third of which went to the state. South Dakota does not have a state statute authorizing NRD recovery and does not use private attorneys to pursue NRD claims

[b] Contact Information

South Dakota Department of Environment and Natural Resources: Joane Lineburg, Hydrologist, Groundwater Quality Program, 523 East Capitol, Pierre, SD 57501. Tel: (605) 773-3296. Web: <http://www.state.sd.us/denr/denr.html>.

[42] Tennessee

[a] Overview

The Department of Environment and Conservation appears to act as Tennessee's Natural Resources Trustee. Although little specific information is available, Tennessee is active in the NRD arena, including with respect to NRD associated with Oak Ridge National Laboratory. Tennessee does not have a state NRD statute.

[b] Contact

Tennessee Department of Environment and Conservation: 401 Church Street, L & C Annex, 1st Floor, Nashville, Tennessee 37243-0435. Tel: (888) 891-8332. Web: <http://www.state.tn.us/environment/>.

[43] Texas

[a] Overview

Three state agencies in Texas have been designated as NRD trustees: the Texas General Land Office (GLO), the Texas Parks and Wildlife Department (TPWD), and the Texas Commission on Environmental Quality (TCEQ). The Governor of Texas designated the GLO as a Natural Resource Trustee (Trustee) in 1991. TPWD was designated in 1990 and TCEQ (then the Texas Water Commission) was designated in 1988. The state does not have a unified budget for NRDA. Each Trustee agency addresses personnel and operational costs for NRDA within their agency's unique budgets. The state reports that it typically pursues cooperative and restoration-focused NRD assessments. State trustees have the "authority to pursue claims for injury to, destruction of, or loss of natural resources as a result of a release of a hazardous substance or a discharge of oil, seek restoration or replacement of such natural resources, and pursue recovery of reasonable assessment costs." Title 30 Tex. Admin. Code §7.124(a). State trustees have never utilized and are not currently considering the use of private attorneys to bring forward cases on the state's behalf.

Potential NRDA cases associated with hazardous substance releases from waste sites are typically identified through the Texas Trustees participation in Texas' remediation process known as the Texas Risk Reduction Program (TRRP). Within this remediation process, active Trustee participation is solicited during the Ecological Risk Assessment phase. Trustee participation is formally established under a Trustee-TCEQ Memorandum of Understanding

(MOU) entered into in 2001. This MOU may be found at Title 30 Texas Administrative Code §7.124. The state reports that “evaluating a site for potential NRDA liability during the remediation process promotes an integrated approach to selecting the most appropriate and effective remediation alternative. This early cooperative involvement of the Trustees within the remediation process provides an effective means by which cases can be efficiently settled, benefiting all parties.”

The state uses special NRDA rules for oil spills in coastal environments (Title 31 Texas Administrative Code, Chapter 20) to address assessment procedures for determining, quantifying and valuing natural resource injury and loss of services. The state reports that, “the rules were developed through an innovative negotiated rulemaking process involving members of industry, conservation organizations, and State and Federal trustees.”

[b] Major Matters

Currently, approximately 39 sites are being actively worked as NRDA cases. Of these cases, 19 are in the assessment phase during which the trustees are quantifying injury and identifying potential restoration actions. The remaining 20 cases have been settled and are in the restoration implementation and monitoring phase.

The total amount recovered by the trustees for damages to natural resources for settled NRDA cases is estimated at \$31,343,600. This value includes those sums recovered in cash settlements as well as the estimated cost of restoration projects implemented by responsible parties. The state of Texas reports the following breakdown of amounts recovered:

Summary of Texas NRDA Settlements by Restoration Category		
Restoration Category	Estimated Cost	Acres
Beach Use	\$1,096,000	-----
Recreational Fishing	\$2,200,000	-----
Dune Construction	\$1,105,000	1
Estuarine Wetlands Construction, Enhancement and Preservation	\$19,723,600	1,673
Oyster Reef Construction	\$2,300,000	11

Rookery Acquisition and Preservation	\$130,000	105
Freshwater Wetlands Construction, Enhancement and Preservation	\$1,351,000	1,113
Riparian Habitat Construction	\$1,300,000	26
Bottomlands Forest Acquisition and Preservation	\$1,180,000	859
Prairie Construction, Enhancement and Preservation	\$268,000	283
Upland Habitat Construction, Enhancement and Preservation	\$690,000	60
TOTAL	\$31,343,600	4,129

The following chart provides the annual breakdown of NRD recoveries in Texas.

Summary of Texas NRDA Settlements by Fiscal Year		
FY	Acres of Habitat	Estimated Cost ¹
1992	875	\$2,000,000
1994	105	\$130,000
1995	256	\$1,300,000
1996	35	\$3,000,000
1997	20	\$200,000
1998	49	\$1,012,500
1999	107	\$50,000
2000	134	\$2,845,000
2001	498	\$3,290,000
2002	110	\$720,000
2003	233	\$1,960,000
2004	2	\$38,100
2005	1,706	\$14,798,000
TOTAL	4,129	\$31,343,600

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[c] Contact Information

Texas General Land Office, Keith Tischler, Natural Resource Trustee Program, Team Leader/Technical Project Manager, Coastal Resources, PO Box 12873, Austin, TX 78711-2873, Phone: 512-463-6287. Web: <http://www.tceq.state.tx.us/remediation/nrtp/>

[44] Utah

[a] Overview

Utah's Natural Resource Trustee is the Department of Environmental Quality. No additional overview information was reported.

[b] Major Matters

Ensign-Bickford Trojan Facility — Discharges from this explosives manufacturing facility in Spanish Fork allegedly created a groundwater plume extending approximately three miles from the plant. In 2004, the state reached a settlement with Ensign-Bickford, including approximately \$2.58 million in NRD.

Southwest Jordan Valley — In 1986, the state filed a claim against Kennecott Utah Copper Corporation for injuries to surface and groundwater reportedly related to historical mining activities in the southwestern section of Salt Lake Valley. A consent decree was reached in 1995, that required Kennecott to complete source control work, to provide \$28 million for restoration of groundwater, and to pay Utah \$9 million in compensation for lost use of groundwater while restoration activities are ongoing. A final restoration plan was approved in 2004.

[c] Contact

Utah Department of Environmental Quality: Natural Resource Damages Trustee, 168 North 1950 West, P.O. Box 144810, Salt Lake City, UT 84114-4810. Tel: (801) 536-4402. E-mail: nrdtrustee@utah.gov. Web: <http://www.deq.utah.gov/>.

[45] Vermont

[a] Overview

The Vermont Agency of Natural Resources is the Natural Resources Trustee in Vermont. Vermont has no formal program and does not appear to have pursued any NRD claims in the past. Vermont has no state statutory NRD authority.

[b] Contact Information

Vermont Agency of Natural Resources, 103 South Main Street, Center Building, Waterbury, VT 05671-0301. Tel: 802-241-3600. Fax: 802-244-1102. Web: <http://www.anr.state.vt.us/>.

[46] Virginia

[a] Overview

Virginia's Natural Resource Trustee is the Secretary of Natural Resources. Virginia does not have its own NRD statute. No additional overview information was reported.

[b] Major Matter

Tazewell County Spill — In 1998, a tanker truck overturned in Tazewell County, Virginia, spilling more than 1,300 gallons of Octocure 554-revised, a rubber accelerant, into a tributary of the Clinch River. According to the state, the spill damaged aquatic habitat along a six-mile stretch of the river and destroyed populations of three endangered species of freshwater mussels, as well as causing injuries to other aquatic life and other natural resources. The state and federal trustees settled with the responsible party, Certus Inc., in 2003 for \$3.7 million in restoration work, primarily aimed at restoring the affected mussel populations and their habitat. Certus also agreed to reimburse the trustees for their assessment costs.

[c] Contact

Virginia Secretary of Natural Resources: P.O. Box 1475, Richmond, VA 23218. Tel: (804) 786-0044. Fax: (804) 371-8333. Web: <http://www.naturalresources.virginia.gov/index.cfm>.

[47] Washington

[a] Overview

The lead Natural Resources Trustee in Washington is the Department of Ecology; however, trustee authority is also shared by The Department of Natural Resources and the Department of Fish and Wildlife. For oil spills, there is a Resource Damage Committee composed of the foregoing trustee agencies plus the State Parks and Recreation Commission, the Department of Health, the Office of Archaeology and Historic Preservation and interested tribes. Washington has a relatively well-established NRD program that began pursuing NRD claims in the mid to late 1980s. The Spills Prevention, Preparedness, and Response Program is an office within the Department of Ecology dedicated to NRD issues, which has an annual budget of \$175,000.

Washington is currently pursuing two major NRD matters: the Commencement Bay Superfund Site, at which Chinook Salmon are the single biggest affected resource, and the Elliot Bay

Superfund Site. Washington handles between thirty and forty oil spill claims annually. Although Washington has pursued hundreds of oil spill claims, none have yet gone to court.

Washington primarily relies on habitat equivalency analysis for assessing NRD for cases other than oil spills. The state has also developed its own formula for assessing NRD from oil spills. Washington uses federal procedures when working with federal trustees, such as NOAA.

Washington does not use private attorneys to bring NRD claims. Washington's state statutes on NRD are Model Toxics Control Act RCW 70.105D (<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.105>), Water Pollution Control Act RCW 90.48 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>), and the Oil and Hazardous Substance Spill Prevention Act, RCW 90.56 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.56>). Liability for "natural resource damages resulting from the release or threatened release of hazardous substances" is strict and joint and several. RCW 70.105D.040(2). Liability for natural resource damages caused by unauthorized releases of oil into state waters is also strict, regardless of fault. RCW 90.56.370(1).

[b] Major Matters

Commencement Bay — Commencement Bay is the harbor for Tacoma, Washington, located at the southern end of Puget Sound. A number of industrial and commercial activities are located on waterways that feed the bay, including pulp and lumber mills, shipbuilding facilities, chemical production facilities, aluminum smelting facilities, and oil refineries. According to the state, contaminants originating from these facilities discharge into the waterways and the bay. The nearshore area of Commencement Bay is an important habitat for numerous marine species, including Chinook Salmon, flat fish, and marine birds. Over 400 PRPs have been identified. NRD assessment activities began in 1991 and are ongoing. Some restoration work has been done and some PRPs have entered settlement agreements, but the case is still ongoing. Extensive additional information is available at <http://www.darp.noaa.gov/northwest/cbay/index.html>.

Elliott Bay/Duwamish River — Elliott Bay is a 8 square mile bay in central Puget Sound, which encompasses the waterfront of downtown Seattle. The major commercial district of Seattle is located on the southeastern shore of the Bay. The bay receives discharges and stormwater runoff from metropolitan Seattle. NRD assessment activities at the site are ongoing. To date, there have been two settlements. The first was with Pacific Sound Resources to address NRD related to a former wood treating facility. The second was with the City of Seattle concerning sewer discharges. As part of the City of Seattle Settlement, \$5 million is to be spent on habitat development and restoration. More information can be found at <http://darp.noaa.gov/northwest/elliott/index.html>.

[c] Contact Information

Dick Logan, Supervisor, Natural Resources Unit, Spills Prevention, Preparedness, and Response, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600. Tel: 360-407-6971.

[48] West Virginia

[a] Overview

It appears the Division of Natural Resources is the trustee agency in West Virginia. West Virginia does not have a state NRD statute. No additional overview information was reported.

[b] Major Matter

Ohio River — A settlement was announced in March, 2006 between federal trustees and trustees for the states of West Virginia and Ohio regarding discharges to the Ohio River from the Eramet Marietta Inc. facility in Marietta, Ohio. Under the agreement, Eramet and three other responsible parties will pay \$2.04 million towards restoration of native freshwater mussels, snails, and fish in the Ohio River. A restoration plan is in the process of development.

[c] Contact

West Virginia Division of Natural Resources: State Capitol, Building 3, Room 669, Charleston, WV 25305. Tel: (304) 558-3380. Web: <http://www.wvdnr.gov/admin/default.shtm>.

[49] Wisconsin

[a] Overview

Wisconsin's Natural Resources trustee appears to be the Department of Natural Resources. Wisconsin has no general NRD recovery statute, although certain statutes provide that individuals who violate certain prohibitions, e.g. operating a motor vehicle in a navigable water, may be required to undertake natural resources restoration.

[b] Contact

Wisconsin Department of Natural Resources: 101 South Webster St., Madison WI 53703. Tel: (608) 266-2621. Fax: (608) 261-4380. Web: <http://dnr.wi.gov/>.

[50] Wyoming

[a] Overview

Wyoming has no formal NRD program, staff, rules, or policies. The Wyoming Environmental Quality Act (EQA) (W.S. 35-11-903) allows the state to collect additional money for the value of lost "fish, aquatic life, game or bird life." Since 1973, the state NRD provision has been used at least once, in the early 1980s. In that matter, the state collected approximately \$50,000 to collect the value of fish lost in a gasoline spill. The amount was calculated based on the cost of restocking the area of the fish kill with trout.

[b] Contact Information

Wyoming Department of Environmental Quality, 122 West 25th St, Herschler Building, Cheyenne 82002. Tel: (307) 777-7937. Fax: (307) 777-7682. E-mail: deqwyo@state.wy.us. Web: <http://deq.state.wy.us/>

Wyoming Game and Fish Department, 5400 Bishop Boulevard, Cheyenne, WY 82006. (307) 777-4600. Web: <http://gf.state.wy.us/>.

AUTHOR'S NOTE: This guide will be updated regularly. Any errors will be corrected upon notice. Corrections or additional information can be provided to the author at brian_israel@aporter.com. The current version of this guide is available at the environmental practice homepage of Arnold & Porter LLP (www.aporter.com).